IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 1297 (SS) OF 2005

Ravindra Verma,
S/o late Shiv Prasad,
Katchery Quarter,
Almora. .....Petitioner.

Versus

District Magistrate, Almora .....Respondents.

Sri Balvinder S. Thind & Sushil Vashisth, Advocates for the petitioner.
Learned Standing Counsel for the State.

Dated: 04.03.2006

Hon'ble Rajesh Tandon, J.

By the present writ petition, the petitioner has prayed for a writ of mandamus commanding the respondents to consider the case of the petitioner for compassionate appointment under the Dying in Harness Rules and give him appointment on Class III post.

Briefly state, the petitioner is an adopted son of late Shiv Prasad, who was a weaver (a Class IV employee) under District Magistrate, Almora. The father of the petitioner Shiv Prasad died in service on 22.03.2002.

Petitioner has submitted that since the petitioner was an adopted son of late Shiv Prasad, the respondent no. 1 did not make any payment to the petitioner of outstanding dues of his father and asked the petitioner to bring succession certificate from the competent Court. The petitioner filed a Case No. 15 of 2002 before the Civil Judge (Senior Division) Almora for granting him succession certificate, which was decided in his favour on 18.11.2003.

On the basis of the order passed by Civil Court in succession Case No. 15 of 2002, the respondent released entire amount gratuity, G.I.S., G.P.F. & leave encashment in favour of the petitioner.

After the death of his father, the petitioner submitted an application on 15.04.2002 before the respondent for giving him compassionate appointment under the Rules. When nothing was done on the said representation, the petitioner moved reminders on 29.04.2002, 14.04.2002, 17.04.2002, 18.04.2002, 23.04.2002, 24.04.2002, 28.05.2002, 30.05.2002, 06.06.2002, 27.01.2004, 01.04.2004 and 26.07.2005 and other dates also, but the grievance of the petitioner is that the same has not yet been decided.

The State Government vide order No. 393 dated 12.08.2004 informed the respondent that so far as the question of son and legal representation is concerned, the petitioner should be read as son only.

The grievance of the petitioner is that inspite of clarification of Government, the respondent has not passed any order regarding compassionate appointment of the petitioner.

The Apex Court in the case of ***Sushma Gosain Vs. Union of India and others (1989) 4 SCC 468*** has held as under:-

> "*We consider that it must be stated unequivocally that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is*

improper to Keep such case pending for years. If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant."

The Apex Court in the case of ***Umesh Kumar Nagpal Vs. State of Haryana (1994) 4 SCC 138*** has relied upon the judgment of ***Sushma Gosain v. Union of India (1989) 4 SCC 468.*** The relevant observations are quoted below:-

"The whole object of granting compassionate employment in thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to; be offered to the eligible member of the family."

"It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned."

It is well settled that appointment on the compassionate ground is purely humanitarian consideration because of the fact that family will not be able to make both ends meet. The purpose of providing employment to the dependant of a Government servant dying-in-harness in preference to

anybody else is to mitigate hardship caused to the family of the deceased on account of his unexpected death while in service. Thus compassionate appointment is treated to alleviate the distress of the family.

In view of the aforesaid legal position, the respondent is directed to consider the case of the petitioner by disposing of the representation filed by the petitioner on 15.04.2002 along with the reminders (Annexure No. 3, 4 and 5 to the writ petition) and pass appropriate order within a period of three months from the date of presentation of the certified copy of the order giving compassionate appointment to the petitioner under the U.P. Recruitment of Dependents of Government Servants Dying in Harness Rules, 1974 adopted by the State of Uttaranchal in the year, 2002.

Writ petition is disposed of. No order as to costs.

(Rajesh Tandon, J.)

04.03.2006
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